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Learning by Doing, 2013 Mitchell Lecture

Looking at fandom, commerce and the freedom to play



Professor Madhavi Sunder, University of California Davis School of Law

When Harry Potter fans dress up as Gryffindor and flick their magic wands, or devotees of *Star Wars* write and post “fan fiction” about their favorite characters, is that harmless play – or copyright infringement? That question is a hot-button issue today in intellectual property law, and it is the subject of SUNY Buffalo Law School’s signature Mitchell Lecture. The speaker is Madhavi Sunder, a leading scholar of law and culture who teaches at the University of California Davis School of Law.

In her lecture, titled “Learning by Doing” and scheduled for Oct. 8 at SUNY Buffalo Law, Sunder will discuss how consumers’ increasing demand for “participatory experiences” presents challenges and cautions in the arena of IP law.

“The explosion of participatory experiential activity extends to a range of contemporary activities, from karaoke to flash mobs, YouTube to Comic-Con,” Sunder says. “Copyright owners have tolerated much fan activity on the theory that lawsuits can turn fans’ love to hate. But the emergence of an ‘experience economy’ may lead some owners of cultural property to reconsider their laissez-faire attitude toward play.” For example, she says, Amazon and Warner Bros. are trying to license fan fiction with an eye toward making a profit from it.

But, Sunder says, that impulse raises caution flags about “the commoditization of fundamental human experiences and play.” Learning theorists have long understood that people learn best through experience – by doing. Efforts to regulate those experiences – what she describes as “singing, writing and playing together, learning music and art by copying masters, dancing and putting on costumes” – may impinge on fundamental human activity. And because IP law is “fundamentally about promoting knowledge and learning,” Sunder says,



Getty Images

A fan at the New York Comic-Con. Is this harmless play or copyright infringement?

lawyers need to be careful to protect that goal even when they are asked to help corporations turn such play into a commodity to be bought and sold.

Sunder’s legal scholarship ranges widely, from intellectual property to human rights law and the First Amendment. She has been a visiting professor at the Yale, University of Chicago and Cornell law schools, and is currently the Thelton E. Henderson Visiting Scholar-in-Residence at the University of California Berkeley School of Law. She was named a Carnegie Scholar in 2006. Sunder’s articles have been published in the *Yale Law Journal*, the *Stanford Law Review*, the *California Law Review* and *Law and Contemporary Problems*, among other journals; and her most recent book, *From Goods to a Good Life: Intellectual Property and Global Justice*, was published last year by Yale University Press.

SUNY Buffalo Law School’s most

prestigious lecture series, the Mitchell Lecture was endowed in 1950 by a gift from Lavinia A. Mitchell, in memory of her husband, James McCormick Mitchell. An 1897 graduate of the Buffalo Law School, Mitchell later served as chairman of the Council of the University of Buffalo, which was then a private university. Justice Robert H. Jackson delivered the first Mitchell Lecture in 1951, titled “Wartime Security and Liberty Under Law.” The lecture was published that year in the first issue of the *Buffalo Law Review*.

Mitchell Lecture programs have brought many distinguished speakers to the Law School. These have included Justice Robert H. Jackson, Richard Posner, Irene Khan, C. Edwin Baker, Derrick Bell, Barry Cushman, Catharine McKinnon, Carrie Menkel-Meadow, Richard Posner and Clyde Summers, among others.